

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY SCOTT VAN HUISEN,

No. 2:23-cv-00944-DJC-EFB (PC)

Plaintiff,

ORDER

JOSEPH R. BIDEN, et al.,

Defendants.

Plaintiff is a state prisoner proceeding without counsel in this action brought pursuant to 42 U.S.C. § 1983. In addition to filing a complaint, plaintiff has filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915, two motions to add defendants, and two motions for appointment of counsel.

Leave to Proceed In Forma Pauperis

Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

Motion for Appointment of Counsel

District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily to represent such a plaintiff. See

1 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v.*
2 *Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional
3 circumstances” exist, the court must consider the likelihood of success on the merits as well as the
4 ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues
5 involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Having considered those factors,
6 the court finds there are no exceptional circumstances in this case.

7 Screening Standards

8 Notwithstanding payment of the filing fee, the court must screen plaintiff’s complaint in
9 accordance with 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the
10 complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to
11 state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who
12 is immune from such relief.” *Id.* § 1915A(b).

13 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
14 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
15 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
16 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
17 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
18 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
19 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
20 U.S. 662, 679 (2009).

21 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
22 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
23 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
24 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
25 678.

26 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
27 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
28 content that allows the court to draw the reasonable inference that the defendant is liable for the

misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v. Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

Discussion

6 Plaintiff's complaint includes among its numerous defendants President Joe Biden and
7 CIA Director William Burns. In an improperly filed supplement to the complaint, plaintiff
8 attempts to add as defendants Hunter Biden, Ron DeSantis, Donald Trump, and Marco Rubio.
9 ECF No. 8. The extravagant allegations are largely incoherent and read as a list of conclusory
10 terms and meandering phrases strung together. For example, Claim I, which is representative of
11 the three additional claims alleged, reads as follows:

Civil Conspiracy! Discrimination towards integration, reversing posterity of breakthrough on the Civil Rights Act. Entering into segregation while discriminating against minorities under color of state law, with irreparable harm and vicarious liability. Allowing the connon [sic] enemy to resurface, after already breaking ground in passage. See Psalm 104:9 "You have set a boundary that they may not pass over, that they may not return to cover the earth." ["] Proverbs 22:28 "Remove not thy ancient boundary mark which you[r] fathers have set." ["] Passage is remedy for color of state law. This only happens through insurrection, or violation of sworn oaths. Lost leader. See Exodus 23:8 for cause of action remedy, cause or action for sic rights while practicing ancient hate, bleeding lawlessness "and you shall take no bribe, for a bribe blinds the discerning and prevents the words of the righteous." ["]

19 ECF No. 1 at 8. The complaint is largely incomprehensible, lacks substance and fails to specify
20 how any particular defendant was involved in violating plaintiff's federal statutory or
21 constitutional rights. As drafted, the complaint presents no cognizable federal claim.

22 A complaint that is frivolous, malicious, or fails to state a claim cannot survive screening
23 under section 1915A(b) and must be dismissed. A claim is frivolous “when the facts alleged arise
24 to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable
25 facts available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992); *see also*
26 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (holding that “§ 1915(d)’s term ‘frivolous,’ when
27 applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful
28 factual allegation.”). Plaintiff’s allegations are indecipherable and, as currently drafted, frivolous.

In an abundance of caution, plaintiff will be given the opportunity to amend his complaint to cure the deficiencies.

Leave to Amend

Plaintiff's complaint is dismissed with leave to amend.¹ If plaintiff chooses to file an amended complaint it should observe the following:

Any amended complaint must identify as a defendant only persons who personally participated in a substantial way in depriving him of a federal constitutional right. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another's act or omits to perform an act he is legally required to do that causes the alleged deprivation). The complaint should also describe, in sufficient detail, how each defendant personally violated or participated in the violation of his rights. The court will not infer the existence of allegations that have not been explicitly set forth in the amended complaint.

The amended complaint must contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

Plaintiff may not change the nature of this suit by alleging new, unrelated claims. See *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

Any amended complaint must be written or typed so that it is complete in itself without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter being treated thereafter as non-existent.””) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)).

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²⁸ ¹ Accordingly, plaintiff's motions to add defendants (ECF No. 15) are DENIED as moot.

Finally, the court notes that any amended complaint should be as concise as possible in fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual background which has no bearing on his legal claims.

Conclusion

Accordingly, IT IS ORDERED that:

1. Plaintiff's application to proceed in forma pauperis (ECF No. 2) is GRANTED;
 2. Plaintiff's motions for the appointment of counsel (ECF Nos. 11 & 19) are DENIED without prejudice;
 3. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in accordance with the notice to the custodial agency filed concurrently herewith;
 4. Plaintiff's complaint (ECF No. 1) is DISMISSED with leave to amend within 30 days from the date of service of this order;
 5. Plaintiff's motions to add defendants (ECF Nos. 15 & 18) are DENIED as moot; and
 6. Failure to comply with this order may result in dismissal of this action for the reasons stated herein.

DATED: August 9, 2023.

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE